

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROBERT DAVID STEELE, et al.

v.

JASON GOODMAN, et al.

Civil Action
No. 3:17CV601
July 31, 2019

COMPLETE TRANSCRIPT OF INITIAL PRETRIAL CONFERENCE
BEFORE THE HONORABLE M. HANNAH LAUCK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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DIANE J. DAFFRON, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 THE CLERK: Case No. 3:17CV601, Robert David
2 Steele, et al. versus Jason Goodman, et al.

3 The plaintiffs are represented by
4 Steven Biss. Mr. Jason Goodman is *pro se*. And
5 Patricia Negron is represented by Johan Conrod.

6 Are counsel ready to proceed?

7 MR. BISS: Yes, Your Honor.

8 MR. CONROD: Yes, Your Honor.

9 MR. GOODMAN: Yes, Your Honor.

10 THE COURT: All right. I want to confirm how
11 we're going to proceed. This is an initial pretrial
12 conference, and what we do in this conference is
13 discuss any issues that we need to have prior to
14 scheduling a trial in the case. And so I want to go
15 over a series of things because obviously we've had a
16 lot of motions practice in this court in this case so
17 far, and I want to be sure that everybody understands
18 the ground rules of how we're going to go forward in
19 proceeding with the case?

20 Now, initially, I want to be clear we are
21 conducting this on the record. So we're in a
22 courtroom. We're in a federal courtroom. We are
23 going to be very formal. Any time you talk, you're
24 going to approach the podium. There are two reasons
25 for that. That is because we do that. That's how we

1 practice unless we have somebody who needs
2 interpretation because they speak a different
3 language.

4 You're also going to do that because that way
5 the microphone can transmit what you say readily to my
6 court reporter who can only hear it from the
7 microphone. It is much harder to do that from counsel
8 table. It also assures that people do not talk over
9 each other. So one person talks at a time. Not only
10 is that courteous, it is also literally impossible to
11 transcribe two people talking at once. So we will not
12 do that.

13 If you have something that you want to
14 interject, the proper thing to do is to just stand
15 where you are, and either I will recognize you or I
16 will not recognize you, but you do not start talking
17 while someone else is at the podium. So that is where
18 we will begin.

19 Now, the other reason we're doing this is
20 that we have a court reporter here, and that's going
21 to create our official record. I understand that the
22 nature of this case involves communications that are
23 purportedly going over the Internet about what folks
24 have said and what folks have not said. We are only
25 having one record in this case, and it is the record

1 that Ms. Daffron is creating for us.

2 Now, part of what we're doing here is we're
3 going to be establishing discovery rules and a trial
4 date. Now, as far as discovery rules, I am well aware
5 that the parties have had difficulty communicating
6 with each other in a productive manner. And so the
7 first thing I want for you all to understand is that
8 the only way that discovery will go forward where
9 anybody records what somebody else has done is through
10 either a deposition with a court reporter or through a
11 trial action.

12 So what I'm saying is to the extent there has
13 been interaction with each other where clearly
14 emotions have run strong, I want everybody here to
15 tell me whether or not they consent to being recorded
16 by any other party or any other representative of a
17 party during the course of this case. You can stand
18 up and say it, because what that will mean is if that
19 begins, it is automatically inadmissible.

20 So I'm going to have you speak first,
21 plaintiff. Mr. Biss, you can approach the podium.

22 MR. BISS: May I approach the podium?

23 THE COURT: Yes.

24 MR. BISS: Judge, just to clarify, when you
25 say recorded by another party, do you mean if I

1 telephone Mr. Goodman, do I consent to him recording
2 that conversation?

3 THE COURT: Correct.

4 MR. BISS: Judge, I do not consent to that.
5 I have two concerns, if I may.

6 THE COURT: If you don't consent to it, you
7 don't consent to it. That's all I'm asking. That
8 includes for your client; correct?

9 MR. BISS: It's true, Judge. We prefer to
10 have it limited solely to a deposition or to in court
11 testimony.

12 THE COURT: Which is normally how a court
13 operates.

14 MR. BISS: Yes.

15 THE COURT: All right, Mr. Conrod.

16 MR. CONROD: May it please the Court. Johan
17 Conrod for Ms. Negron.

18 We do not consent to recording other than
19 through the deposition or trial process. Thank you.

20 THE COURT: So that includes counsel and that
21 includes your client; correct?

22 MR. CONROD: It does. Thank you, Your Honor.

23 THE COURT: And it's audio or visual;
24 correct?

25 MR. CONROD: Correct.

1 THE COURT: All right. Have a seat, please.

2 Mr. Goodman.

3 MR. GOODMAN: Good day, Your Honor.

4 I suppose I don't consent to being recorded,
5 but to the extent that recordings exist, I'm a bit
6 confused as to what the implications of what you're
7 asking are.

8 THE COURT: So, we're going to address about
9 anything that is already either on the Internet or in
10 the video. That's separate. What I'm saying now is
11 during the course of this litigation, are you
12 objecting to either Mr. Biss, or his client, or an
13 agent, Mr. Conrod, or his client, or an agent
14 recording you either audio or visually at all? Unless
15 it's in a deposition or it's in court like we're
16 recording this right now.

17 MR. GOODMAN: I apologize for equivocating,
18 but I don't want to relinquish any rights, and since
19 the opposition has objected, I tend to think I should
20 object as well, but I don't say anything that is
21 untrue, and I don't have any fear of anything that
22 I've said being recorded and played back for the
23 Court.

24 THE COURT: I mean, you can not object. This
25 is really meant to protect everybody.

1 MR. GOODMAN: If they object, then I will
2 object for the reason that they have, and I will
3 consent to have all future communications go through
4 the official channels that the Court requests.

5 THE COURT: What I'm trying to do, and just
6 so you understand, I register what you're saying as an
7 objection.

8 MR. GOODMAN: I object.

9 THE COURT: There are state laws that allow
10 one party to record another party, and if that one
11 party knows it and even if the other party doesn't
12 know it, it is not illegal. There's no problem with
13 doing it. I really haven't looked at the laws
14 wherever anybody lives, but I think it would create a
15 confusing record if somebody were to do that during
16 the course of this litigation.

17 So if Mr. Biss or Mr. Steele were to call you
18 and be recording it without telling you, that may be
19 legal. It would be extremely messy, I think, for
20 purposes of this litigation, and I think we have
21 plenty of information about what the other sides are
22 doing or not doing without that.

23 The same would be true for you. You could
24 not call Mr. Conrod. You're not allowed really to
25 call their clients, necessarily. You should think

1 about that. But you can't record anybody even if you
2 say "I want to record it. I'm okay with recording
3 it." Some places require both parties to consent.

4 What I'm saying here is: I am asking whether
5 you all just want to go on the official record that
6 we're creating for this court, which, honestly, I'm
7 not trying to trick anybody. I think it's in
8 absolutely everybody's best interest. It's in yours.
9 It's in Mr. Steele's. It's in Ms. Negron's. It's in
10 everybody's best interest. That's why I'm asking.

11 MR. GOODMAN: I agree to conduct myself in
12 accordance with your advice.

13 THE COURT: I'm not giving you legal advice.
14 I can't give legal advice.

15 MR. GOODMAN: Sorry. Your preference. I
16 apologize. Really, I would like to apologize for
17 my -- sorry. Let me strike that. I will object and
18 agree to conduct this on the official record if it
19 pleases the Court.

20 THE COURT: Right. Well, you can do whatever
21 you want to do. I'll lodge it as an objection now.
22 You can do research later on and change it any time
23 you want to. You just have to do it on the record
24 before you change your position. All right?

25 MR. GOODMAN: Yes. My intention is to

1 cooperate with the Court.

2 THE COURT: All right. Okay.

3 All right. So, Mr. Biss, I directed you in
4 my last ruling to address how you anticipated that we
5 would go forward as far as discovery, because clearly
6 it has not been tremendously successful to date, and
7 I'd like to hear your thoughts on that, please.

8 MR. BISS: Yes, Your Honor.

9 Judge, when I received from CM/ECF your
10 order, I sent out an email the same day to all counsel
11 in the case outlining a what I'll call a three-step
12 plan, if you will, for improving the quality of
13 communications in this case in order to address the
14 very issues that Your Honor highlighted.

15 So, number one, it is the pledge of the
16 plaintiffs and plaintiffs' counsel that they will
17 avoid the vitriol that Your Honor observed in your
18 order, and, quite frankly, in two of the pleadings
19 that I did file, I will -- I will acknowledge that
20 some of the language was unnecessary. It certainly
21 wasn't my intention to cause Mr. Goodman any
22 heartache, but obviously it did.

23 So our number one point is that plaintiffs
24 and myself pledge that no more language that might be
25 provocative. We're going to stick to legal issues.

1 We're going to stick to facts in the case. If we have
2 an issue that we think cannot be resolved by the
3 parties through communication, we're going to bring
4 that to Your Honor's attention in the form of a motion
5 with an appropriate memorandum. We're going to do so
6 civilly, and we're going to do so with adequate legal
7 support. That's number one.

8 Number two, I reversed my decision to
9 eliminate telephone communications with Mr. Goodman,
10 and I pledge to reverse that in its entirety.

11 There are a couple of areas in the case where
12 the parties need to communicate, and one of those is
13 to resolve any disputes over discovery, and so
14 telephone communications need to occur.

15 I have again, in light of Your Honor's
16 ruling, and, I think, common sense, I will communicate
17 with Mr. Goodman via telephone. I have concerns about
18 that. I think Your Honor's addressed one of those
19 concerns already with the decision not to have
20 recordings.

21 One of the things that I was concerned about
22 was that these telephone communications would be
23 livestreamed on the Internet. And I spoke with Mr.
24 Conrod about that, and it just -- it's very unsettling
25 to me. When I speak with somebody and try to resolve

1 something, I want to have a large sense of trust. I
2 want to say what I need to say to get it done. I
3 don't want to have YouTube videos being made. It's
4 just never -- in 30 years, it's never happened. It's
5 a concern, but I think we really have resolved that.

6 The telephone communications regarding
7 discovery I think are necessary to resolve disputes,
8 but I will call to the Court's attention, I don't want
9 to get into any telephone communications with Mr.
10 Goodman where he threatens criminal prosecution or he
11 accuses me of crimes and things like that, Judge.
12 This is extremely unproductive and not helpful.

13 So I will tell the Court in view of the new
14 policy, Mr. Goodman and I did have a conversation --

15 THE COURT: I'll acknowledge you in a little
16 bit, Mr. Goodman. Thank you.

17 MR. BISS: Mr. Goodman and I did have a
18 conversation on Monday, Monday afternoon, after
19 one o'clock. And we went through the ongoing disputes
20 regarding, among other things, the Rule 26(a)(1)
21 documents that haven't been produced, and then the
22 plaintiffs are -- the plaintiffs have some concerns
23 about Mr. Goodman's responses to the request for
24 production of documents.

25 We had a conversation about that. We,

1 unfortunately, weren't able to resolve anything. And
2 so -- but I will continue to communicate via telephone
3 until it becomes futile. At some point it becomes
4 futile.

5 Number three, Judge, is I continue to be a
6 proponent of email and, to a lesser extent, text
7 message communication. The reason being is that
8 there's no misunderstanding with an email. You can
9 set forth your position, your views, on just about
10 anything. You can do it either in a lengthy email or
11 you can do it succinctly. So I will continue to
12 communicate with Mr. Goodman at his
13 truth@crowdsourcethetruth.org email address only.

14 Mr. Goodman has indicated that he has another
15 email address. I've been using both, but he's got
16 another email address, ProtonMail, that he doesn't use
17 or he doesn't know the password to. So I'm not going
18 to use that ProtonMail account anymore. And,
19 actually, I stopped doing that maybe a few weeks ago.

20 So all email communication will go to the one
21 that he acknowledges is active and he uses. And,
22 again, I do think that third form of communication
23 should help the parties avoid emotion. I think it's
24 good because it avoids emotion except when you leave
25 the all caps on, which sort of never really happens,

1 but email is a somewhat emotionless technology.

2 And then, Judge, the fourth point that I
3 would raise is if these parties -- if the parties are
4 unable to resolve their differences, courts are
5 perfectly well equipped -- magistrate judges are
6 perfectly well equipped to referee if there's any
7 dispute that can't be resolved.

8 My experience is there is really virtually no
9 dispute that can't be resolved. And so I think that
10 applies certainly to the discovery context in this
11 case. There are cases, legal cases, that can't be
12 resolved. My experience in the Eastern District is
13 just about every case gets resolved. Very few trials.
14 In fact, I think the last trial I had was with Judge
15 Novak as a magistrate judge.

16 So that, Judge, is my pledge to the Court in
17 response to your order, my pledge to Mr. Goodman, and
18 of course I will say this: I've had nothing but good
19 luck with Ms. Negron's counsel in terms of
20 communicating, in terms of resolving issues that come
21 up, discussing issues. I have not spoken with Mr.
22 Conrod. My main contact has been with Mr. Wills,
23 Benjamin Wills, but either counsel. It doesn't
24 matter. I copy all three of the counsel on all the
25 emails.

1 Judge, if the Court has any questions, I'll
2 be happy to answer them.

3 THE COURT: No, that's fine. I'll hear from
4 Mr. Conrod and then from you, Mr. Goodman.

5 MR. CONROD: Your Honor, I really don't have
6 very much to add other than, you know, we -- to the
7 extent I don't -- frankly, I don't even think there
8 have been any issues that involved us directly, you
9 know. And that's not to say there won't be. I'm sure
10 we'll object to something eventually. But at this
11 point we haven't been involved in these issues and
12 certainly heed the Court's direction on this and read
13 very carefully your opinion the other day about how to
14 conduct -- how everybody should conduct themselves in
15 this case, and we're going to -- have been trying to
16 do that and are going to continue to try to do that.

17 And as Mr. Biss pointed out, my colleague
18 Mr. Wills has been carrying the heaviest burden on
19 that and does a very good job, but we're doing
20 everything we can to get this case through to where --
21 a posture that it can be decided and represent our
22 clients as effectively as -- or our client -- as
23 effectively as we can, Your Honor.

24 And so I don't have anything to add other
25 than that. Thank you.

1 THE COURT: All right.

2 So, Mr. Goodman, now you can speak.

3 MR. GOODMAN: Thank you, Your Honor.

4 I was not going to bring this up today, but
5 to answer a point that Mr. Biss brought up with regard
6 to this ProtonMail address, I have never indicated to
7 him that that was an active email address for me.
8 That is an address that he extracted from a 2017
9 communication with a third party, the Elusive Queen
10 Tut, Susan Lutzke. I never indicated that that was an
11 active address.

12 ProtonMail, just to familiarize the Court, is
13 an encrypted email service. And the issue that I have
14 with it is when you lose the password or forget the
15 password, you are not able to retrieve email from it.
16 The only way to proceed is to create a new password
17 which deletes all emails there to preserve the
18 security of the account.

19 So at some point in 2017 or '18 I abandoned
20 use of that. I do not use that Proton email account.
21 I have never emailed Mr. Biss from that account. I
22 have never responded to an email from him on that
23 account. I have never seen an email from him on that
24 account.

25 And, curiously, as I look through all of my

1 emails with Mr. Biss, he's communicated with me both
2 on truth@crowdsourcethetruth.org, my current email
3 address from my current business, which I am the only
4 employee of. I am the only person who reads that
5 email. I'm the only person who sends from that email.
6 And that is my email address of record with respect to
7 this legal action. And I was very disturbed to learn
8 on May 2nd when I sent Mr. Biss a communication
9 through the normal channels that we have used,
10 primarily because he's refused to speak with me on the
11 phone, that I had said to him "I haven't heard
12 anything from you in a week. So I presume this
13 conference is not confirmed."

14 The message I had sent to Mr. Biss said, "I
15 will be available after May 1st." The confirmation
16 that he sent into an email hole, to an email address
17 that I don't get, said, "Okay, Jason. We're confirmed
18 for May 3rd."

19 Now, I don't want to speculate, but in the
20 absence of a response from me, I can't explain why Mr.
21 Biss did not send another email to confirm or call me
22 to confirm. It is my speculation that Mr. Biss
23 intended for me to miss that meeting, and I believe
24 that Mr. Biss has gone out of his way to make it
25 difficult for he and I to resolve disputes before we

1 came here and utilized the time and resources of this
2 Court.

3 THE COURT: Okay. So, Mr. Goodman, I'm going
4 to interrupt you for a couple of reasons. One is Mr.
5 Biss said he's not going to use that email address
6 anymore. So it's certainly not an issue going
7 forward.

8 It is a bad idea to speculate. So I'm just
9 going to tell you that generally. Ultimately, facts,
10 what has happened, is what I determine. So what is
11 very interesting is in a court, you know, say, in a
12 criminal case, somebody comes in and with all their
13 heart they believe that they have not run a red light,
14 and with all heart and good faith on the other side an
15 officer believes they have run a red light. Two
16 people testify. One says, you know what? It was
17 green. The other says, Nope, it was red.

18 And everybody knows it is illegal to run a
19 red light. And so what gets decided by the judge or
20 the jury is whether it was green or red. It's a fact.

21 So I will hear the case, determine the facts,
22 and the law. And so usually somebody loses. Like
23 maybe 100 percent of the time somebody loses in court.
24 Right?

25 MR. GOODMAN: Yes.

1 THE COURT: So what I am trying to do is have
2 you all adhere to the process, the process, because
3 that's what makes it fair. Due process. The Federal
4 Rules of Civil Procedure, the local rules, the rules
5 of evidence. Those are the rules of the road. They
6 create and they maintain due process. It is extremely
7 important.

8 But as far as what Mr. Biss intended or what
9 you intended or even sometimes what you said, he could
10 say he said something, and I could find otherwise, and
11 that's a fact of the case. That's why you have an
12 appeal.

13 You could say you said something, and I could
14 say otherwise. That's a fact of the case. I have to
15 support it. Either the appellate court says I was
16 appropriate, what I did, or they reverse me.

17 So I really want to focus on how we're going
18 to go forward in a fair and efficient manner because
19 we are not going to have 20 filings for everything
20 that comes in front of the Court. There are rules
21 about that.

22 And I can tell you there are probably 500
23 things right now, and I'm really not trying to
24 exaggerate, that the two of you could raise that the
25 other disagrees with about what's happened in the

1 past. It may be more.

2 So what we are going to do is assure that I
3 have a record that allows me to make an informed and
4 legally proper decision.

5 So, first of all, the Proton email, not
6 happening anymore. We are establishing the rules
7 about how you will communicate with each other in a
8 manner that creates a record that I can review and
9 make an informed and impartial decision.

10 So, I don't have a dog in your fight. And so
11 that's why you're in front of me. That's what I
12 intend to do in the case. But it's clear to me, as
13 you can see based on my previous ruling, my last
14 memorandum and order, that I don't think you guys are
15 even looking at the rules, and that can't happen. If
16 you were looking at them, you need to look at them
17 better because they were completely disregarded. All
18 right?

19 MR. GOODMAN: Yes. And I appreciate
20 everything you're saying, Your Honor. I would like to
21 reiterate for the record, I sincerely apologize for my
22 failure to adhere to the rules. I assure you that I
23 have looked at them, and I know that you know that I'm
24 *pro se* and not a lawyer, and this is not an excuse,
25 simply a statement. It's frequently difficult for me

1 to know what those rules are telling me to do, and I
2 will absolutely make an even greater effort to do
3 that. I do not mean to make your court my crash
4 course in how to be a lawyer.

5 I think it was important to put these
6 statements into the record. I apologize for
7 speculating. I will leave it to Mr. Biss if it
8 becomes relevant for him to explain why that was the
9 only email --

10 THE COURT: That's not even at issue today.
11 We're not even talking about that. All we are doing
12 is figuring out how we're going to talk to each other
13 so you can do on-the-record discovery. We're looking
14 forward. We're going forward.

15 Now, let me tell you this: As far as being
16 *pro se*, I have given you tremendous breadth as far as
17 what I've allowed you to file in this court and say
18 and do. Tremendous breadth. The law requires me to
19 read *pro se* filings liberally, but it doesn't allow
20 you to violate the rules.

21 And so one of the reasons I'm making this so
22 clear, as I did with Mr. Biss, is this is your
23 warning. I have told you. I took a lot of time
24 telling you what you did wrong so far. Right? I went
25 through the motions. I told you why they were wrong.

1 I told you about the rules that were potentially
2 violated. That's it.

3 If you don't understand it, hire a lawyer.
4 And that's all I can tell you. You don't have a right
5 to counsel in a civil case, so you have to hire a
6 lawyer. And there are plenty of lawyers that might be
7 able to help you, but I don't have any input into that
8 as far as that's concerned because you only have a
9 right to counsel in a criminal case.

10 So what I want to be sure that you
11 understand, and I'm saying this to Mr. Biss, and I'm
12 saying it to the extent it's necessary to Mr. Conrod,
13 there are sanctions for failing to follow the rules.
14 All right?

15 So under Rule 11, if you do not follow the
16 rules or the directive of the Court, and this doesn't
17 actually pertain to discovery, and you sign a
18 document, you can pay money to the Court, and you can
19 pay money for fees to the other side. So that's one
20 place where you can get sanctioned.

21 Rule 26(g) it requires that -- so this is
22 what we're going into, and I'm saying this to all of
23 you, you have to sign the discovery, and when you do,
24 though, when you produce discovery and you sign it,
25 you are saying that you have made a reasonable inquiry

1 into what you are turning over or saying. It's a
2 reasonable inquiry.

3 So it can't be the case that you don't really
4 look for things. It can't be the case that you think
5 this is the answer. Now you're in front of a Court,
6 and when you sign a document, it has legal
7 consequences. You have to say, This is really, really
8 all I think I can find. And if later somebody points
9 out otherwise, there can be sanctions. There has to
10 be a substantial justification for having missed
11 stuff. And that's under 26(g)(3).

12 So, I'm telling you the rules. They are all
13 on the Internet. Most courts have them available on
14 their websites.

15 MR. GOODMAN: (Indicting.)

16 THE COURT: Good. That's great.

17 So if you make an improper certification,
18 either the signer or the party, which basically you
19 would be both because you're *pro se*, can incur
20 reasonable expenses or fees or both.

21 So regarding interrogatories, you have to
22 sign under Rule 33(b)(3), Federal Rule of Civil
23 Procedure 33(b)(3), and you have to provide documents
24 under Rule 34(2)(B) and (C). So they go in order.
25 Depositions, interrogatories, and production of

1 documents.

2 Now, if you don't do it right, and by that
3 that means legally correctly, which you are obligated
4 to learn enough to understand, under Rule 37, either
5 if you fail to disclose what you're required to, under
6 26(a), which I think you all have had discussions
7 about or 26(e), or if you fail to supplement, and so
8 that means as soon as you know something -- you've
9 found something else or you know something else, you
10 have to tell the other side. Basically, as quickly as
11 you can. And if you don't do that, if you don't
12 supplement or you don't answer, there are pretty
13 serious sanctions for that that don't just go to
14 money.

15 So it could be the case that you're not
16 allowed to use the information you come up with at
17 trial or at a hearing. Even if it's true, it doesn't
18 go in, because it's not fair. You don't let the other
19 side know. And I make the determination of what the
20 sanctions are.

21 Most of these have some kind of exception
22 like unless it's substantially justified. Someone
23 would have to say why you couldn't possibly have known
24 earlier or why you forgot to turn it over.

25 You could also have to pay, and this is all

1 under Rule 37, pay fees and expenses. It can be the
2 case if it's a jury trial that the jury could be told
3 that you failed to disclose it, and they can infer
4 whatever they want to from that, or I can impose any
5 other sanction, and that includes, and this is under
6 37(b)(2)(A)(i) through (vi), the sanctions can include
7 that I direct that whatever is improperly turned over
8 or improperly disclosed, that the prevailing party,
9 the other side, those facts, the facts that they want
10 in evidence or that matter, it's just is a fact of the
11 case. That's one sanction.

12 It can be determined that you've given up
13 your right to challenge it because you didn't do it
14 fairly, essentially.

15 Under 37(b)(2)(ii), I can prohibit the
16 disobeying party from supporting or opposing any claim
17 or defense, or from seeking to introduce something
18 into evidence.

19 Under Section (iii), I can strike a whole
20 pleading. I can strike part of a pleading.

21 And (iv), I can just stay the case until
22 anything is obeyed.

23 Under (v), I can dismiss the action in whole
24 or in part. On the other side, I can render default
25 judgment, a judgment against the disobeying party.

1 So it's not just the case that it can cost
2 money. It means that you can win or lose the case if
3 things go too far awry.

4 And so I'm telling you this, I'm telling Mr.
5 Biss this, that I have rarely seen so contentious a
6 record before I even have an initial pretrial
7 conference. And I don't care whose fault it is. What
8 I am saying to both of you is it must stop. It must
9 stop.

10 And, Mr. Goodman, I appreciate that you're
11 saying you're not an attorney and that you're doing
12 the best you can, but even if you're not an attorney
13 and you disobey the rules, with warning, which I'm
14 giving you right now, you suffer sanctions. Do you
15 understand that?

16 MR. GOODMAN: I do.

17 THE COURT: All right. Is there something
18 else you wanted to say?

19 MR. GOODMAN: There is. I'm very aware of
20 the jeopardy that you're describing that I could put
21 myself in, or the case in, and I am committed to
22 following the rules.

23 I may have to find a lawyer. The reason I do
24 not have a lawyer is I don't have the funds, and I
25 understand that I'm not guaranteed the right for a

1 lawyer.

2 There is information that has come to me,
3 because one of the most important things you just said
4 to me, Your Honor, is that we need to have a fair and
5 honest process so that we can have due process. There
6 is a very important matter that has been brought to my
7 attention only days ago that I hope I'll have an
8 opportunity to share with you. I'm happy to share it
9 with all parties. And it speaks directly to the
10 genesis of this matter and the propriety of the whole
11 entire case.

12 May I share the information with you
13 verbally?

14 THE COURT: I fear it's going to be totally
15 irrelevant. I'm just going to warn you in advance.
16 Does either party object here? At least you can
17 answer to it when he raises it.

18 MR. BISS: I think I know what he's going to
19 be talking about. I object. I don't think it's
20 relevant at all to this case.

21 MR. GOODMAN: How do you know what I'm going
22 to say?

23 THE COURT: So, you don't talk to each other
24 like that in the courtroom. Each of you talks to me
25 and you only talk with permission. If it's not

1 relevant, I can rule on it not being relevant.

2 MR. BISS: Yes, Your Honor.

3 THE COURT: Any objection on behalf of
4 Ms. Negron?

5 MR. CONROD: I don't have a position either
6 way, Your Honor.

7 THE COURT: So, let me tell you, Mr. Goodman.
8 I'm saying in advance, my sense is it's probably
9 irrelevant, and to the extent you think it's going to
10 be incendiary, you should really, really be careful
11 because we cannot make accusations against each other
12 party to party, lawyer to lawyer, lawyer to *pro se*,
13 without a firm basis in this court. All right?

14 MR. GOODMAN: Yes.

15 THE COURT: Okay. Go ahead.

16 MR. GOODMAN: The information I'd like to
17 share with you pertains to emails a former client of
18 Mr. Biss has sent to me and a narrative that this
19 client, Manuel Chavez, III, who has been discussed
20 throughout the pleadings, the totality of what he has
21 explained to me and the emails that he has shared with
22 me and other documents that he has shared with me
23 indicate that Mr. Biss was in communication with
24 Manuel Chavez during a time period that Mr. Biss's
25 wife, Tanya Cornwell, was in communication with Manuel

1 Chavez and had paid Manuel Chavez \$1,500 through a
2 service called Patreon and was aggressively trying to
3 convince Manuel Chavez to bring a lawsuit against me
4 concurrent with the lawsuit from the plaintiff.

5 The plaintiff is also in email communication
6 with Chavez during this time. They discuss how they
7 should not share with anyone various parties that
8 they're communicating with. And Mr. Chavez has
9 provided me with extensive email communications that I
10 believe do provide extremely strong evidence, you
11 might even say prima facie evidence, of the conspiracy
12 that I allege to defame me, to harass me, to destroy
13 my worldwide reputation, and to interfere with my
14 business.

15 I believe that the intervenor applicant was
16 involved with this as he is also in direct
17 communication with Manuel Chavez during this period,
18 and I have extensive evidence that I intend to share
19 with the Court throughout the course of this trial
20 that I believe will prove that Mr. Biss, his wife, the
21 plaintiff, and various third parties were in a
22 conspiracy to commit barratry. I believe they are in
23 a regular practice of doing this.

24 A second client of Mr. Biss, who I am not in
25 communication with, made a public Internet broadcast

1 accusing Mr. Biss, and this is a gentleman named
2 David Seaman, who I have not spoken to about this
3 matter. I've spoken to him once in 2016 at a public
4 event where I met him.

5 Mr. Seaman, without any input from me, took
6 it on his own accord to produce a broadcast in which
7 Mr. Seaman alleges that the plaintiff, Robert David
8 Steele, aggressively pursued Mr. Seaman to retain Biss
9 for the sum of \$15,000 to bring a lawsuit against an
10 Internet company. I believe it was Twitter. I would
11 have to check. And then Mr. Biss, according to
12 David Seaman, did not show up at the court hearing.
13 He told Mr. Seaman he would have to --

14 THE COURT: Okay. So, here, I'm going to
15 interrupt you. Okay. What about that is not
16 incendiary? What about what you just said is not
17 incendiary?

18 MR. GOODMAN: Well, I feel it's relevant
19 because --

20 THE COURT: No, that's not the question.
21 What about that is not likely to incite another side
22 to anger?

23 MR. GOODMAN: It's factual.

24 THE COURT: Even if it were correct, do you
25 think the other side would like it?

1 MR. GOODMAN: Probably not.

2 THE COURT: Probably not?

3 MR. GOODMAN: I don't know.

4 THE COURT: Would you like it if somebody
5 said it about you?

6 MR. GOODMAN: I would never do it.

7 THE COURT: Listen. You have to answer the
8 questions I am asking you.

9 MR. GOODMAN: I would not like it.

10 THE COURT: Of course not. So, here's the
11 issue, Mr. Goodman. Whether or not that did or did
12 not happen, what you just gave me is boatloads, layers
13 of hearsay. Under the rules of evidence, hearsay is
14 inadmissible unless there is an exception. And to
15 bring information to the Court, you have to do it
16 under a rule. You have to make a motion. Under the
17 motion, you have to cite the rule that allows you to
18 bring the motion, and then you write a separate
19 memorandum about the motion, and there you would
20 address relevance. Right? You would say it's
21 relevant because of X, Y, and Z, and I am allowed to
22 tell you this because of X, Y, and Z. And then the
23 other side responds. And they respond however they
24 respond. And then you reply.

25 If you bring the motion, you get the last

1 word. You only get three of those, though; right?

2 One for you, one for the responder, one for you.

3 But there are rules about how you bring that
4 information to the attention of the Court. And I
5 don't think you can cite a rule to me now because
6 there really isn't one right now for you to put forth
7 all of that information and hearsay to me orally.

8 So, I can see that you think it matters a
9 lot. What I see in this record is that both, all the
10 parties, especially Mr. Steele, and especially you,
11 really believe the other is in a conspiracy and out to
12 get him. You both believe that. One of you thinks
13 the light is green and one of you thinks the light is
14 red. That's what I see. So I need a basis to make an
15 informed finding about whether or not it's green or
16 red.

17 So neither of you -- the reason I admonish,
18 including Mr. Biss, strongly, you can't put that kind
19 of junk in a filing in front of a federal court. What
20 you do is you cite facts that you can support, and you
21 cite the law, and you do it under the rules that
22 exist.

23 I fully and completely understand that the
24 two of you think, meaning Mr. Steele and you, think
25 that the other is out to get you and ruin your

1 reputation. That is clear. I have hundreds of
2 documents that make that clear to me. So we're beyond
3 that. I know it about Mr. Steele relative to you. I
4 know it about you relative to Mr. Steele.

5 Now you have to find a legal basis that I can
6 tie it into so that I can make the finding yes or no.
7 If you believe that somebody is defaming, it doesn't
8 matter. I make the finding as to whether or not it's
9 defamatory. And I do it based on admissible evidence
10 that is before the Court and the law.

11 Now, do you understand why that was not the
12 appropriate time to mention that issue?

13 MR. GOODMAN: I understand your explanation,
14 and I believe I understand why it was not the
15 appropriate time to mention it.

16 THE COURT: All right. There's a process.
17 So what we are doing is we're going to establish a
18 trial date. I'm going to enter an order that sets
19 forth all the pretrial deadlines. My order will set
20 forth when discovery goes forward, when it stops, when
21 motions can be filed, dispositive motions can be
22 filed.

23 I have a discovery process that I'm not sure
24 it's going to work in this case, so I'm just going to
25 ask you all maybe to handle it a little differently.

1 And during the process, you all have to do written
2 discovery asking each other questions that are legally
3 viable and written production of documents, and if you
4 think it's unfair or inappropriate, you object under
5 the rules. It has to be under the rules. It can't be
6 that you think it's not fair.

7 So, I understand that as a *pro se* person you
8 asked for a protective order basically not to have to
9 do discovery and to stay the case, and I get why you
10 would want to do that, but you just can't. You've
11 been sued. And so I said no to that. So we are
12 moving forward under the rules.

13 Now, I heard Mr. Biss say he's willing to
14 talk to you on the phone. What I want you all back
15 and forth to do is something that is grown up. You
16 all just have to start talking to each other without
17 such nasty allegations back and forth that the other
18 side loses his mind. And I don't know how else to put
19 it. That's not a legal finding, but that's really how
20 you have to start acting. You're in court.

21 And so if it cannot happen on the telephone,
22 if tempers flare, email strikes me as the way to go.
23 I'll tell you, I don't really like text messaging
24 either because it's harder to put into evidence. I
25 can't really say you can't text message each other,

1 but then if you want to rely on it, you have to put it
2 in evidence, and that's hard to do.

3 But we just have to get down to the facts of
4 what happened. And we're going to do it, and we're
5 going to do it with a minimum of divergence, because
6 I've allowed you all to have about a year of
7 divergence. And for us, that's a geologic age. We
8 pretty much decide cases quickly.

9 So are you with me, Mr. Goodman?

10 MR. GOODMAN: I am, Your Honor.

11 THE COURT: All right. Okay. So you may
12 have a seat.

13 All right. Now, I'm going to schedule a
14 trial date in this case, and the deadlines will work
15 back from there. I would not think that this case
16 should go on for three full days, but I'm willing to
17 take three full days to try it.

18 Do counsel -- Mr. Goodman, I'm sure it's
19 pretty hard for you to figure out how many days this
20 case will take, but does counsel have any input into
21 that?

22 MR. BISS: If it please the Court, I think
23 three days. We have a significant number of
24 witnesses. We have one expert at this point in time.
25 We have witnesses who are overseas. So there will be

1 some video depositions probably.

2 THE COURT: All right. Counsel for Ms.
3 Negron.

4 MR. CONROD: Your Honor, I have no idea how
5 long Mr. Biss plans to put it on. If he thinks it
6 will take three full days, then I have no basis to
7 argue with him on that, Your Honor. I don't
8 anticipate our case will be three full days. That's
9 for sure. Maybe a couple of witnesses.

10 THE COURT: All right. Now, I'm willing to
11 give a little extra time given Mr. Goodman's *pro se*
12 status. I can schedule the case for March 18, 19, and
13 20.

14 MR. BISS: That works for the plaintiffs,
15 Your Honor.

16 MR. CONROD: That's fine with Ms. Negron,
17 Your Honor.

18 MR. GOODMAN: It's fine for me.

19 THE COURT: All right. So the way the jury
20 trial works is that everybody here will come in at
21 nine o'clock ready to go. Any witness, any piece of
22 evidence, you have to be completely ready to go.
23 Usually before a jury trial we have preliminary things
24 to take care of, and so that means like going over
25 final jury instructions, making sure that we know the

1 witness order or other issues.

2 So I don't bring the jury in until
3 ten o'clock, but we will start at nine o'clock. We
4 will bring the jury in at ten o'clock, and we go full
5 days. So we will go all day the 18th and the 19th
6 and the 20th.

7 It is not the case that -- Mr. Goodman, I'm
8 saying this for your benefit, but it happens with
9 counsel also, as I'm sure these gentlemen have seen.
10 It's no excuse that you thought the case was going to
11 go longer and your client is not there. Either your
12 witness is there on the day you present your case or
13 they're not. So we're going to keep going. So there
14 are no delays on those kinds of bases because we have
15 a jury. Right? We don't waste jurors' time like
16 that. So I want to be sure you understand that.

17 All right. We also schedule a final pretrial
18 conference. And I'm going to schedule that for
19 February 20. And that will be at one o'clock.

20 MR. BISS: Judge, I am not available on
21 February 20. I think I'm in trial that day. I can
22 try to move that, Your Honor, because it's a lot of
23 months off.

24 THE COURT: What about the 21st?

25 MR. BISS: The only dates in the February I

1 have are the 24th and the 28th.

2 THE COURT: Well, I have a jury both days. I
3 don't want to go later than those days. We can move
4 it back, but the issue is that's making your deadlines
5 worse because things fall from the final pretrial
6 conference.

7 MR. BISS: I'm just not sure what to do.

8 THE COURT: Well, how about the this: I'll
9 schedule it for the 20th at one o'clock, and you can
10 let me know if there's any possibility of doing
11 anything else at another time. It's only half a day.

12 So the final pretrial conference, that's in
13 the courtroom. It's very formal. It's very
14 substantive. So that's where the Court decides what
15 is or is not going to go into evidence. So, people
16 say it's not relevant, and I say yes, it is relevant,
17 or I say it's not relevant. If I say it's not
18 relevant, the jury never hears about it. We can't
19 even talk about it. If I say it is relevant, it goes
20 in the trial.

21 So lots of decisions get made during that
22 conference. It's pretty long, and you have to put
23 together information to submit to me, and usually that
24 is done collectively.

25 So, I'm going to ask you to sort of look and

1 read up on that. You'll have to know about the jury
2 instructions. Those are due at a certain date.
3 Designations of discovery. Those are due at a certain
4 date. Before trial there is a deadline for what are
5 called dispositive motions, motions for summary
6 judgment, and that's an important thing for you to
7 focus on, Mr. Goodman, because it is possible that
8 some or all of either side's case can go away just by
9 written motion. And so you have to pay close
10 attention to what that deadline is. And if you want
11 to try to make somebody else's part of their case go
12 away, you have to follow the rules about how to do
13 that. If you file it late, I can't hear it, because
14 the rules say when it's going to happen.

15 So my pretrial order is really important.
16 And so all I can say to you is that you have to read
17 it and absorb it. One of the things it does is that
18 it requires if there is a discovery dispute, that
19 folks fill out a chart about what the discovery
20 dispute is.

21 Now, I'm struggling to think that you all
22 will be able to do that. It requires moving back and
23 forth for 14 days online saying whether you agree or
24 disagree with each other. With a *pro se*, I'm not sure
25 how effective that can be regardless, because it's

1 pretty specific, and you're supposed to cite the rules
2 and the basis.

3 So what I'm going to ask that you all do is
4 that if either side has a discovery issue you want to
5 bring, any side, file a motion with a basis, per the
6 rule, per the law, make it clear, and then contact the
7 Court about how I'm going to handle it.

8 Once you filed the motion, contact the Court
9 within one business day about seeing what we can do
10 about how to handle any discovery issues. So that
11 will be different in the motions practice itself.

12 MR. CONROD: Your Honor, can I ask just one
13 logistical question?

14 THE COURT: Yes. And why don't you approach
15 the podium, please.

16 MR. CONROD: It's, frankly, kind of a dumb
17 question, Your Honor, but normally the discovery
18 disputes will be handled by the magistrate judge.
19 When you say "contact the Court," do you mean contact
20 your chambers?

21 THE COURT: Yes, I don't refer my discovery
22 disputes because I did so many as a magistrate judge.
23 Actually, this court is usually very effective at
24 resolving them among the parties.

25 I also believe that I will try the case

1 better if I know what's going on in discovery anyhow.
2 So I don't refer them.

3 MR. CONROD: Sure. Thank you very much.

4 THE COURT: Now, I'm going to admonish all
5 parties here, in the Eastern District of Virginia,
6 discovery disputes are extremely rare. And so you
7 really are required, *pro se* or not, but counsel also,
8 you are required to make a really good faith effort to
9 resolve the dispute, and any resistance one way or the
10 other, Mr. Goodman, has to be based on the rules, not
11 whether you think it's fair. It has to be based on
12 the rules. And so it will be presented to me in that
13 fashion.

14 And because of the kind of motions practice
15 I've had to date, I'm going to tell you, I'm going to
16 be swift to issue sanctions, because I'm warning you
17 now, because I think it's over the top what has been
18 in front of the Court already, and we're just going to
19 move forward. We're going to try this case.

20 If you have a defense, and the other side
21 thinks that they have a case, we'll just try it.
22 That's what we're here to do, but we're not here to
23 get stuck in the weeds of either inconsequential or
24 irrelevant issues.

25 My last thing, I told you that I would take

1 under advisement the motion for a protective order.
2 And two parties have agreed to the protective order.
3 I want to ask you first, Mr. Biss, there is a series
4 of paragraphs in the protective order that refer to
5 "for counsel's eyes only," and I want to ask you to
6 explain to me and to Mr. Goodman how that works in the
7 context of one of the parties being *pro se*.

8 MR. BISS: Yes, Your Honor. What I tried to
9 build into the protective order was for purposes of
10 that particular designation, the *pro se* litigant would
11 be considered counsel. So if there were, for
12 instance, a sensitive financial document that we did
13 not want Mr. Goodman sharing with a third party, we
14 would indicate that for counsel's eyes only, meaning
15 for Mr. Goodman in his capacity as a *pro se* litigant,
16 for his eyes only.

17 THE COURT: All right. And where is that
18 built in?

19 MR. BISS: Judge, I didn't bring the
20 protective order with me, but I believe it's in the
21 section that talks about for counsel's eyes only. If
22 it's not, that would be what I would envision putting
23 in that section.

24 THE COURT: All right. It does say in
25 paragraph 2(g) on page five that for purposes of this

1 paragraph only, paragraph only, any *pro se* party shall
2 be deemed to be counsel. I presume that you mean
3 paragraph -- I think you have to be a little more
4 clear about that.

5 MR. BISS: For purposes of that, that's a
6 subparagraph.

7 THE COURT: Just can say, you know, it's
8 paragraph 2 -- it's all in paragraph 2, right?
9 Because you have 2(d)(i) through (iv). Then you have
10 (e), (f), (g). So please write it like a layperson
11 could understand it.

12 MR. BISS: All right.

13 THE COURT: All right. Let me tell you this,
14 Mr. Goodman. I've said in my past order that this
15 protective order, Ms. Negrón has agreed to be bound by
16 it. This protective order, except for this one issue,
17 I want to be clear that when it talks about "counsel's
18 eyes," it means also you as *pro se*, and I think Mr.
19 Biss did try to put it in. Because it's in the middle
20 of a paragraph, and it says "this paragraph," and it's
21 paragraph 2(g), I think it can be cleaned up a little
22 bit. But I think you're hearing now that that
23 designation "for counsel's eyes only" means that only
24 the lawyers can see it and only you can see it, and
25 they can't turn it over even to their own client.

1 Is that what you mean by that, Mr. Biss?

2 MR. BISS: Yes, Your Honor. He is his own
3 client, so that's --

4 THE COURT: Right. But I'm saying it
5 couldn't go to Mr. Steele or Ms. Negron if it's marked
6 that.

7 MR. BISS: That's correct.

8 THE COURT: All right. So, I don't see this
9 as particularly troublesome, but I am not your lawyer.
10 So you cannot rely on anything I say one way or the
11 other. I'm saying it to all of you. I'm expressing
12 or asking a question with respect to Mr. Biss about
13 how it's worded. But this is meant to protect the
14 papers for everybody.

15 If you mark it that it's confidential or it's
16 for counsel's eyes only, then this order says you can
17 only do certain things with it. It cannot be marked
18 for counsel's eyes only or for confidentiality by
19 anybody irresponsibly. It's not the case that
20 everything is confidential.

21 But the parties generally agree to this. And
22 I don't know why, it doesn't matter why, there's been
23 no input from you as to this protective order. And so
24 what I'm going to order as your first test is that in
25 seven days I want a written filing in this court as to

1 whether or not the protective order, as filed,
2 whatever version it is, is agreed to or not agreed to.

3 If it is not agreed to, I want the party that
4 is not agreeing to explain why in writing. Seven
5 days.

6 Do you understand that, Mr. Goodman?

7 MR. GOODMAN: May I --

8 THE COURT: It's yes or no.

9 MR. GOODMAN: Well, I can answer it now
10 without filing.

11 THE COURT: Okay.

12 MR. GOODMAN: If Mr. Biss will agree to
13 modify the language such that anything marked
14 confidential can be seen by me as my own client, then
15 I'm fine with it, and we can agree to that now. I
16 will accept it now.

17 I also want to add that I have never
18 live-streamed a phone call with anyone without telling
19 them, and I have substantially all of the requested
20 discovery material that doesn't include photographs of
21 myself naked. I've got all the emails with both
22 co-defendants, the plaintiff, and the counsel for the
23 plaintiff ready to deliver to the Court, copies to
24 both sides, and I just want to clarify that the only
25 issue with the discovery was the noncommunication.

1 And if we can communicate, I'm happy to provide
2 discovery materials that are reasonable, not based on
3 hearsay, and I believe the Court will agree that me
4 naked has nothing to do with this case. That's
5 certainly irrelevant.

6 THE COURT: I'm not going to make any ruling
7 on any discovery matter that I don't have both sides
8 on and understand what question it pertains to, what
9 request for production it pertains to. There is a
10 process to raise those issues. And so I'm just not
11 answering that.

12 As far as the protective order, I think that
13 Mr. Biss just said that if it's marked confidential or
14 for counsel's eyes only, that you can see it as your
15 counsel and as being the client. I believe he
16 answered that question in the affirmative.

17 Is that correct, Mr. Biss?

18 MR. BISS: That's correct, Your Honor.

19 MR. GOODMAN: I understood it was pertaining
20 just to the paragraph that you were talking about, so
21 perhaps that was a misunderstanding on my part.

22 THE COURT: I do think, Mr. Biss, you should
23 be clear about exactly what it covers. So just work
24 with Mr. Conrod to make the language crystal clear for
25 a human being that hasn't been spoiled by having a

1 legal education. All right?

2 MR. BISS: Yes, Your Honor.

3 THE COURT: So, I'm going to give you seven
4 days, and you have to submit the statement with the
5 protective order on that date.

6 I believe that you all can do that. You can
7 submit the protective order. If it is jointly
8 submitted, I will enter it. If it is not jointly
9 submitted, you have to submit the order that is
10 disagreed upon, and the party that doesn't like
11 something about it has to tell me why in writing,
12 succinctly, no more than three pages, because the
13 protective order itself is 10 pages.

14 So we can't go into much. Just say I don't
15 like it for this reason. I think it's not appropriate
16 under this rule or this law or this case. But I
17 actually think you can submit it. It is meant to
18 assure that all parties are bound to handle discovery
19 in a fair way. It goes without saying there's no
20 live-streaming of any conversation.

21 And as with you, you shouldn't insinuate, and
22 Mr. Biss, although he said he was fearful it would go
23 live-stream, I just can't take that into account. You
24 guys are not going to do that. I'm not weighing that
25 against you any more than I'm weighing against Mr.

1 Biss what you suggest may have happened with
2 scheduling because of the email that it was sent to.
3 All right? Blank slate for everybody.

4 Is there anything else I need to address?
5 Mr. Goodman?

6 MR. GOODMAN: I'm fearful that anything I say
7 is going to be inappropriate at this time, so I won't
8 say it.

9 THE COURT: Okay. We're only here to
10 schedule the trial date, so that's probably true.

11 All right. Mr. Biss?

12 MR. BISS: Nothing from our side, Your Honor.

13 THE COURT: All right. Mr. Conrod?

14 MR. CONROD: Nothing further, Your Honor.

15 THE COURT: All right. Well, I look forward
16 to having your filings. And I really do encourage you
17 all to -- you just have to put a little bit of steam,
18 water on the fire. Just try the case that I am able
19 to try. And it's way more limited than what I've been
20 getting filings about. All right?

21 So that's all we have for today. I'll enter
22 an order accordingly. Thank you.

23 (The proceedings were adjourned at 3:54 p.m.)
24
25

I, Diane J. Daffron, certify that the foregoing is
a correct transcript from the record of proceedings
in the above-entitled matter.

/s/

DIANE J. DAFFRON, RPR, CCR

DATE